IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANTS' REPLY BRIEF ON APPEAL

APPELLANTS:	Thorsten A. Laux, et al.	ATTY DOCKET NO.:	30014200-1020
SERIAL NO.:	10/025,497	GROUP ART UNIT:	2151
DATE FILED:	December 26, 2001	EXAMINER:	Karen C. Tang
INVENTION:	METHOD AND APPARATUS FOR PROVIDING A CLIENT BY A SERVER WITH AN INSTRUCTION DATA SET IN A PREDETERMINED FORMAT IN RESPONSE TO A CONTENT DATA REQUEST MESSAGE BY A CLIENT		

Mail Stop Appeal Brief - Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants submit herewith Appellants' Reply Brief on Appeal under 37 C.F.R. §41.41 in response to the Examiner's Answer mailed on February 23, 2007.

The Commissioner is hereby authorized to charge any deficiency in fees associated with this communication or credit any overpayment to Deposit Account No. 19-3140. A duplicate copy of this sheet is enclosed.

Respectfully Submitted,

/Christopher P. Rauch/ (Reg. No. 45,034)
Christopher P. Rauch
SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. Box #061080
Wacker Drive Station - Sears Tower
Chicago, IL 60606-1080
Telephone 312/876-2606
Customer #58328
Attorneys for Appellants

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANTS' REPLY BRIEF ON APPEAL

APPELLANTS:	Thorsten A. Laux, et al.	ATTY DOCKET NO.:	30014200-1020
SERIAL NO.:	10/025,497	GROUP ART UNIT:	2151
DATE FILED:	December 26, 2001	EXAMINER:	Karen C. Tang
INVENTION:	METHOD AND APPARATUS FOR PROVIDING A CLIENT BY A SERVER WITH AN INSTRUCTION DATA SET IN A PREDETERMINED FORMAT IN RESPONSE TO A CONTENT DATA REQUEST MESSAGE BY A CLIENT		

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In accordance with the provisions of 37 C.F.R. §41.41, Appellants submit this Reply Brief on Appeal in response to the Examiner's Answer mailed on February 23, 2007. Appellants respectfully submit that the Examiner's assertions are incorrect as a matter of fact and law. Thus, for the reasons set forth below, Appellants respectfully request that this Board reverse the rejection of claims 1-45 under 35 U.S.C. §103.

I. STATUS OF CLAIMS:

Claims 1-45 are pending in the application.

The present appeal is directed to claims 1-45, which were finally rejected in an Office Action dated April 21, 2006. A copy of claims 1-45 is appended to Appellants' Main Brief on Appeal as an Appendix.

The status of the claims on appeal is as follows:

Claims 1-45 are rejected under 35 U.S.C. §103(a) as being unpatentable *Brandow, et al. (U.S. Patent No. 6,938,041)("Brandow")* in view of *Gu, et al. (U.S. Patent No. 6,892,230)("Gu.")*

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

Claims 1-45 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Brandow, et al. (U.S. Patent No. 6,938,041)("Brandow")* in view of *Gu, et al. (U.S. Patent No. 6,892,230)("Gu.")*

III. ARGUMENT:

Claims 1-45 stand rejected under 35 U.S.C. §103 by the Examiner as being rendered obvious based on various references. As set forth more clearly below, the rejection of the claims set forth by the Examiner under 35 U.S.C. §103 is improper and accordingly the Board should reverse this rejection.

Claims 1-45 are not rendered obvious under 35 U.S.C. §103(a) based on the teachings of *Brandow* in view of *Gu*

Appellants respectfully submit that the Examiner's assertions are incorrect as a matter of fact and law. Thus, for the reasons set forth below, Appellants respectfully request that this Board reverse the rejection of claims 1-45 under 35 U.S.C. §103(a) as being unpatentable over *Brandow* in view of *Gu, et al. (U.S. Patent No. 6,892,230)("Gu.")*

I. *Brandow's* first type of tree data structure fails to teach or suggest Appellants' tree data structure of claims 1-42, 44, and 45

The Examiner fails to prove that *Brandow's* first type of tree data structure 1) includes instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format (claims 1-42, 44, and 45), 2) includes instruction format nodes that have node selection criteria associated with them (claims 1-42, 44, and 45), 3) has nodes, which have node selection criteria, that are accessed and selected in response to a content data request (claims 1-42, 44, and 45), and 4) is stored in an instruction format configuration file (claims 1-37, 44, and 45). *Brandow* fails to disclose or suggest Appellants' claimed tree data structure.

A. *Brandow's* first type of tree data structure does not include instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format

The Examiner presents several arguments on how *Brandow's* first type of data structure allegedly teaches Applicant's claimed tree data structure, however *Brandow's* first type of data

structure is fundamentally different and unrelated. *Brandow* queries a database using SQL statements that have been received from a client. *Brandow* 7:31-33. *Brandow* parses the received SQL statements and converts them into a query tree, "which represents the components of the query in a format selected for the convenience of the system." *Brandow* 7:36-39. The query tree is then normalized, compiled, and converted "into a set of instructions suitable for satisfying the query." *Brandow* 7:31-64.

Thus, *Brandow's* query tree *is a content data request*--it is an SQL query--that is used to search a database. Each of *Brandow's* nodes includes a single SQL statement, not a combination of instruction elements. Each of *Brandow's* query tree nodes merely includes *a single SQL statement*, which is a component of the received SQL query. *Brandow* 7:36-39. Appellants' nodes each indicate a *combination of instruction elements* including a specified instruction format. *Brandow's* individual nodes do not include *a combination* of instruction elements and do not include *a specified instruction format* -- they each merely include a single SQL statement.

For at least this reason, *Brandow's* first type of tree data structure fails to suggest Appellants' claimed tree data structure of claims 1-42, 44, and 45.

B. ***Brandow's*** **first type of tree data structure does not include instruction format nodes that have node selection criteria associated with them**

Brandow's query tree is not itself accessed or searched, and thus there is no suggestion that it's nodes include node selection criteria. As discussed above, *Brandow's* query tree *is a content data request*--it is an SQL query--that is used to search a database. *Brandow's* query tree nodes each include a single SQL statement that is used to search the database. *Brandow's* query tree nodes are not themselves accessed or searched, thus there is no need or suggestion for *Brandow's* nodes to include node selection criteria that are used to find matching nodes.

For at least these reasons, *Brandow's* first type of tree data structure is fundamentally different and unrelated to Appellants' claimed tree data structure of claims 1-42, 44, and 45.

C. ***Brandow's* first type of tree data structure is a search query (SQL query) and is not itself accessed or searched**

Appellants' claimed tree data structure nodes are *accessed or searched* and selected in response to a content data request. This is unrelated to *Brandow's* first type of tree data structure, *which is a content data request.*

Brandow queries a database using SQL statements that have been received from a client. *Brandow* 7:31-33. *Brandow* parses the received SQL statements and converts them into a query tree, "which represents the components of the query in a format selected for the convenience of the system." *Brandow* 7:36-39. The query tree is then normalized, compiled, and converted "into a set of instructions suitable for satisfying the query." *Brandow* 7:31-64. Thus, *Brandow's* query tree *is a content data request*--it is an SQL query--that is used to search a database. *Brandow's* query tree is not itself accessed or searched.

For at least this reason, *Brandow's* first type of tree data structure is fundamentally different and unrelated to Appellants' claimed tree data structure of claims 1-42, 44, and 45.

D. ***Brandow's* first type of tree data structure is not stored in an instruction format configuration file**

Contrary to the Examiner's assertion, *Brandow's* first type of tree data structure is not stored in *Brandow's* database--it is used to query *Brandow's* database. Claims 1-37, 44, and 45 each claim an additional limitation of the tree data structure being stored in an instruction format configuration file. The Examiner appears to argue that *Brandow's* first type of tree data structure is stored in *Brandow's* database, because the Examiner alleges that *Brandow's* data base is an instruction format configuration file. *Examiner's Answer*, page 15. However, *Brandow* makes no such teaching. As discussed above, *Brandow's* first type of tree data structure *is an SQL database query* that is used to query *Brandow's* database. Nowhere does *Brandow* disclose or suggest that its first type of tree data structure is stored in its database. In fact *Brandow* fails to disclose or suggest that its first type of tree data structure is stored in any type of file.

For at least this additional reason, *Brandow's* first type of tree data structure fails to suggest Appellants' claimed tree data structure of claims 1-37, 44, and 45.

II. ***Brandow's*** **second type of tree data structure fails to teach or suggest Appellants' tree data structure of claims 1-42, 44, and 45**

Brandow's second type of tree data structure also fails to disclose or suggest Appellants' claimed tree data structure. *Brandow's* second type of tree data structure is a *clustered index for a database*, which is clearly unrelated to Appellants' claimed tree data structure.1 *Brandow's* database includes records, and *Brandow's* tree's nodes include data pages of the records of the database. Contrary to the Examiner's argument, nowhere does *Brandow* disclose or suggest that its clustered index includes instruction format nodes indicating a specified combination of instruction elements. Instead, *Brandow's* clustered index nodes merely include data pages. Nowhere does *Brandow* suggest that its clustered index nodes include combinations of instruction elements.

Further, *Brandow's* clustered index nodes do not include a specified instruction format or have associated with them node selection criteria for matching an instruction format node. This is because *Brandow's* clustered index is merely a database index that is searched to find data pages in a database. *Brandow's* clustered index is unrelated to Appellants' claimed tree data structure that includes instruction format nodes that are accessed or searched for instruction format nodes. Accessing or searching instruction format nodes is simply not suggested by *Brandow*. The Examiner appears to ignore the claim terms by broadly reading Appellants' claimed tree data structure having instruction format nodes onto any tree data structure,

---

1 *Brandow* defines a clustered index as "an index which stores the data pages of the records themselves on the terminal or leaf-level nodes of the index." *Brandow* 7:14-30. *Brandow* 7:14-30 further describes that

> [f]or enhancing the speed in which the Database Server stores, retrieves, and presents particular data records, the Server maintains one or more database indexes on the table, under control of an Index Manager. A database index, typically maintained as a B-Tree data structure, allows the records of a table to be organized in many different ways.

regardless of the target tree data structure's node type or content. *Examiner's Answer,* page 16.

For at least these reasons, *Brandow's* first type of tree data structure is fundamentally different and unrelated to Appellants' claimed tree data structure of claims 1-42, 44, and 45.

III. *Brandow* and *Gu* fail to disclose or suggest Appellants' template of claim 43

Brandow and *Gu* fail to disclose or suggest a template that describes at what places in an instruction data set specified instruction elements can be placed, as claimed in Appellants' claim 43. *Brandow* discloses a template that can be used to create objects. *Brandow* 15:56. However, nowhere does *Brandow* disclose or suggest its template describes at what places in an instruction data set specified instruction elements can be placed. This subject matter is simply not discussed in *Brandow.* *Gu* also teaches using templates, however, *Gu's* templates describe a transmission protocol. *Gu* 52:66. *Gu* fails to disclose or suggest a template that describes at what places in an instruction data set specified instruction elements can be placed. Therefore, *Brandow* in view of *Gu* fails to disclose or suggest Appellants' claimed template of claim 43.

VIII. CONCLUSION:

For the foregoing reasons, Appellants respectfully submit that the rejection posed by the Examiner is improper as a matter of law and fact. Accordingly, Appellants respectfully request the Board reverse the rejection of claims 1-45.

Respectfully submitted,

/Christopher P. Rauch/ (Reg. No. 45,034)
Christopher P. Rauch

SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. Box #061080
Wacker Drive Station - Sears Tower
Chicago, IL 60606-1080
Telephone 312/876-2606
Customer #58328
Attorneys for Appellants